is generally understood in Canada. It involves matters of faith and worship, and freedom of religion involves freedom in connection with the profession and dissemination of religious faith and the exercise of religious worship. But it does not mean freedom from compliance with provincial laws relative to the matter of property holding ...

In *Carnation Co. Ltd.* v. *Quebec Agricultural Marketing Board* 67 D.L.R. (2d) 1 at p.14, (1968) S.C.R. 238 at p. 252, reference was made to the distinction between legislation 'affecting' the appellant's interprovincial trade and legislation 'in relation to' the regulation of trade and commerce. In my opinion, the legislation in question here undoubtedly affects the future expansion and creation of Hutterite colonies in Alberta, but that does not mean it was enacted in relation to the matter of religion. The Act is in relation to the right to acquire land in Alberta, if it is to be used as communal property, and, in consequence, it is within provincial jurisdiction under section 92(13)."

I consider *Walter* to be an extremely pertinent and important authority and almost directly to the point in relation to the suit before us, and a wholesale transposition of the text of the judgment in that case which I have cited with the appropriate commutation of the requisite legislative heads of power involved to the question presented in the instant case would *mutatis mutandis* make it equally and would effectively apply, in my view, to come plumb within the four corners of the present discussion with an identical conclusion in respect of the matter for determination and illustrates the dominant aspect of public order and criminal law in section 298A.

For the reasons I have ventilated and in the light of the law I have discussed, I had no hesitation whatsoever at the conclusion of argument in this matter in holding that section 298A was validly enacted by Parliament and that the declarations sought by the petitioners must be refused and the suit accordingly dismissed.

*Application allowed.*

Solicitors: *Sri Ram, Zulkifly & Kumar.*

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## R. RETHANA v. THE GOVERNMENT OF MALAYSIA & ANOR.

[O.C.J. (Ajaib Singh J.) July 4, 1987]

[Kuala Lumpur – Civil Suit P. 324 of 1984]

*Constitutional Law – Legislation – Employees' Social Security Act 1969 (Socso), ss. 31 & 42 – Whether ultra vires the Federal Constitution – Whether discrimination unfair – Federal Constitution, arts. 8 & 4.*

*Labour Law – Employees' Social Security Act, ss. 31 & 42 – Whether discrimination unfair – Whether unconstitutional – Federal Constitution, arts. 4 & 8.*

The plaintiff in this case sought declarations to the effect that sections 31 and 42 of the Employees' Social Security Act 1969 (Socso) were *ultra vires* the Federal Constitution.

Counsel for the plaintiff contended that these two sections violate Article 8(1) of the Federal Constitution which provides for equal protection of the law for all persons and for equality of all persons before the law. He contended that the two sections of Socso were discriminatory because employees in industries covered by Socso were precluded from suing their employers under the common law for damages arising from injuries sustained in the course of employment.

**Held**: (1) it is well established that a reasonable classification does not offend Article 8(1) of the Federal Constitution if it satisfies two conditions – first, that the classification does not offend Article 8(1) of the Federal Constiwhich distinguishes those that are grouped together from others and, second, that the differentia must have a rational relation to the object sought to be achieved by the Act;

(2) the classification by Socso was not arbitrary. It was fair and reasonable;

(3) the plaintiff's claim for the declarations was dismissed with costs.

*Cases referred to:*

(1) *Datuk Haji Harun bin Haji Idris* v. *Public Prosecutor* [1977] 2 M.L.J. 155.

(2) *State of West Bengal* v. *Anwar Ali Sarkar* [1952] S.C.R. 284; A.I.R. 1952 S.C. 75.

CIVIL SUIT.

*Karam Singh Veriah* for the plaintiff.

*Mary Lim* (Senior Federal Counsel) for the first defendant.

*Joga Singh* for the second defendant.

*Cur. Adv. Vult.*

**Ajaib Singh J.**: The plaintiff in this case seeks declarations to the effect that sections 31 and 42

of the Employees' Social Security Act 1969 (Socso) are *ultra vires* the Federal Constitution. Section 31 states that:

"An insured person or his dependants shall not be entitled to receive or recover from the employer of an insured person –

(i) any compensation under the Workmen's Compensation Ordinance 1952 or

(ii) damages under any other law for the time being in force

in respect of an employment injury sustained as an employee under this Act."

And section 42 of Socso reads as follows:

"When a person is entitled to any of the benefits provided by this Act he shall not be entitled to receive any similar benefit admissible under the provisions of any other written law."

Mr. Karam Singh Veriah for the plaintiff contends that these two sections violate Article 8(1) of the Federal Constitution which provides for equal protection of the law for all persons and for equality of all persons before the law. He contends that sections 31 and 42 of Socso are discriminatory because employees in industries covered by Socso are precluded from suing their employers under the common law for damages arising from injuries sustained in the course of employment. These sections he says are inconsistent with the fundamental rights provision in Article 8(1) and therefore void under Article 4(1) which states that:

"This Constitution is the supreme law of the Federation and any law passed after Merdeka Day which is inconsistent with this Constitution shall to the extent of the inconsistency be void."

With respect I cannot accept Mr. Karam Singh's contention. The constitutional validity of Socso cannot be challenged. Socso is perfectly valid and none of its provisions is *ultra vires* the Federal Constitution. Article 8(1) which states that all persons are equal before the law and entitled to the equal protection of the law is designed to prevent the segregation of any class of persons for differential and discriminatory treatment but it does not prevent Parliament from enacting any law classifying persons for legitimate purposes based on fair and reasonable grounds.

It is well established that a reasonable classification does not offend Article 8(1) of the Federal Constitution if it satisfies two conditions – first, that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and, secondly, that the differentia must have a rational relation to the object sought to be achieved by the Act. (See *Datuk Haji Harun bin Haji Idris* v. *Public Prosecutor*[1] and *State of West Bengal* v. *Anwar Ali Sarkar*[2].)

The classification by Socso is not arbitrary. It is fair and reasonable. It groups all employers and employees in industries as defined in the Act – any business, trade, undertaking, manufacture or calling of employers and any calling, service, employment, handicraft or industrial occupation or avocation of employees. Employees in these industries have a common characteristic which distinguishes them from those excluded from the group. The common characteristic here is the fact of their employment in the industries as listed out in Socso. The intelligible differentia test is thus satisfied. And as for the second condition it is abundantly clear that this differentia has a rational nexus to the avowed object sought to be achieved by Socso, namely, to provide for benefits to these employees in case of invalidity and employment injury including occupational diseases.

Socso appears to be a fair and benevolent piece of legislation designed to protect employees and their dependants who come within the ambit of its provisions. An employee's right to compensation for injuries received in his employment is entrenched. All that need be shown is the fact of injury received in the course of employment in order to invoke the provisions of Socso and provide for compensation for the injured person. The employee need not prove negligence on the part of his employer nor is his own negligence to any extent taken into account. He receives benefits under Sosco for life and these benefits are not stopped or reduced if he becomes gainfully employed afterwards. And benefits under Socsco have steadily increased over the years.

The plaintiff's claim for the declarations she seeks is dismissed with costs.

*Order accordingly.*

Solicitors: *Karam Singh Veriah & Co.; V.P. Nathan & Partners.*